

THE HONORABLE MARSHA J. PECHMAN

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

REC SOFTWARE USA, INC., a Virginia
corporation,

Plaintiff/Counter-Defendant,

v.

HTC AMERICA, INC., a Washington
corporation,

Defendant/Counter-Plaintiff.

Case No.: 14-cv-01025-MJP (Lead Case)

Case No. 14-cv-1048-MJP (Non-Lead Case)
Case No. 14-cv-1050-MJP (Non-Lead Case)
Case No. 14-cv-1053-MJP (Non-Lead Case)
Case No. 14-cv-1056-MJP (Non-Lead Case)
Case No. 14-cv-1059-MJP (Non-Lead Case)
Case No. 14-cv-1060-MJP (Non-Lead Case)
Case No. 14-cv-1062-MJP (Non-Lead Case)

**PLAINTIFF'S PARTIAL OPPOSITION
TO DEFENDANTS' MOTION TO
STRIKE PLAINTIFF'S
INFRINGEMENT CONTENTIONS**

**PLAINTIFF'S PARTIAL OPPOSITION TO DEFENDANTS'
MOTION TO STRIKE PLAINTIFF'S INFRINGEMENT CONTENTIONS**

Plaintiff REC Software USA, Inc., files this partial opposition to Defendants' Motion to Strike Plaintiff's Infringement Contentions [Dkt. No. 71] filed jointly by defendants Dell Inc.; Dell Products L.P.; HTC America, Inc.; Huawei Device USA Inc.; Huawei Technologies USA, Inc.; Futurewei Technologies, Inc.; LG Electronics U.S.A., Inc.; LG Electronics Mobile Research U.S.A., L.L.C.; LG Electronics MobileComm U.S.A., Inc.; Kyocera Communications, Inc.; Motorola Mobility LLC; Samsung Electronics America, Inc.; Samsung Information Systems America, Inc.; Samsung Telecommunications America, LLC; Samsung Electronics Co., Ltd.; Sony Mobile Communications (USA) Inc.; and ZTE (USA) Inc.

I. Plaintiff Withdraws Its Allegations Of Infringement Based On Making, Offering To Sell, Selling And Importing Accused Devices

Plaintiff has asserted that defendants directly infringed independent Claim 1, a method claim, and dependent Claims 2-4, and 6, of U.S. Patent No. 5,854,936 on the basis that defendants used, made, offered to sell, sold, and imported devices that automatically and necessarily performed the method of the asserted claims upon startup. At the time plaintiff filed its complaints against defendants, and also at the time plaintiff served its infringement contentions on defendants, plaintiff believed in the merits of its claims of direct infringement based upon making, offering to sell, selling, and importing the accused devices. However, as often happens in patent infringement cases, the Federal Circuit Court of Appeals very recently issued an opinion that has caused plaintiff to reexamine the likelihood of success with respect to such claims, and to make the difficult decision to withdraw its claims of direct infringement based upon making, offering to sell, selling, and importing the Accused Devices. Plaintiff does not withdraw and continues to pursue its other infringement claims against defendants.

Plaintiff's infringement contentions were served on November 7, 2014. On December 4, 2014, the Federal Circuit issued the opinion defendants rely upon, *Ericsson, Inc. v. D-Link Systems, Inc.*, 773 F.3d 1201 (Fed. Cir. 2014). See Defendants' Motion to Strike at p. 5. Dell, Inc. ("Dell"), a defendant in the present case, was also a defendant-appellant in *Ericsson*. Also on December 4, Dell sent plaintiff a letter, requesting that plaintiff withdraw its contentions of infringement based upon making, offering to sell, selling and importing the accused devices. DeJong Decl.,¹ Ex. 1 at 3-4. Dell did not cite the *Ericsson* case in its letter, but instead cited the dissenting opinion in a different Federal Circuit case, *LifeScan Scotland, Ltd. v. Shasta Techs., LLC*, 734 F.3d 1361, 1382 (Fed Cir. 2013). *Id.* Plaintiff, Dell and other defendants' counsel subsequently conferred by telephone about these issues on January 9, 2015. Neither Dell, nor

¹ "DeJong Decl." refers to the Declaration of Timothy S. DeJong in Support of Plaintiff's Partial Opposition to Defendants' Motion to Strike Plaintiff's Infringement Contentions, filed contemporaneously herewith.

any other defendant, identified the *Ericsson* case in that conference. Dell and plaintiff continued to confer by email. On January 12, 2015, Dell's counsel discussed the fact that the language it relied upon from the *LifeScan* case was from the dissenting opinion, and cited several other Federal Circuit cases, but not *Ericsson*. In fact, defendants did not identify the *Ericsson* case until they filed this motion to strike on January 22, 2015.

It is not clear that *Ericsson* is dispositive of the claims asserted here. However, a January 20, 2015, decision of the Northern District of California applied *Ericsson* to grant summary judgment of non-infringement of claims more akin to those asserted by plaintiff. *See Adaptix, Inc. v. Apple, Inc.*, --- F.Supp.3d ----, 2015 WL 273140 (N.D. Cal. 2015). The court in *Adaptix* discussed the state of pertinent Federal Circuit case law prior to *Ericsson* and the parties' competing positions:

Citing the Federal Circuit's decision in *Ricoh Co., Ltd. v. Quanta Computer Inc.*, Defendants argued that they could not have directly infringed because it is undisputed that they merely sold preprogrammed accused handsets and did not perform any of the required steps. *Adaptix* countered with the decision by the Federal Circuit in *SiRF Technology, Inc. v. ITC*, in which the court found direct infringement based on the sale of accused devices preprogrammed to automatically perform certain steps at issue.

Id. at *1 (footnotes omitted). The court noted that, "[a]s the undersigned struggled to reconcile these holdings following a spirited oral argument, into his lap fell a new Federal Circuit decision issued on December 4, 2014—*Ericsson, Inc. v. D-Link Systems, Inc.*—that reconciled these seemingly contradictory holdings for him." *Adaptix*, 2015 WL 273140 at *1 (footnote omitted). Faced with these developments, plaintiff has no desire to continue to pursue that aspect of its case, and hereby withdraws all contentions of infringement based upon making, offering to sell, selling and importing the accused devices.

II. Plaintiff's Infringement Contentions Satisfy Local Patent Rule 120

"[T]his District's Local Patent Rules 'require both the plaintiff and the defendant in patent cases to provide early notice of their infringement and invalidity contentions, and to proceed with diligence in amending those contentions when new information comes to light in the course

of discovery. The rules thus seek to balance the right to develop new information in discovery with the need for certainty as to the legal theories." *REC Software USA, Inc. v. Bamboo Solutions Corp.*, 2012 WL 3527891 at 82 (W.D. Wash. 2012) (quoting *O2 Micro Int'l Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1365–66 (Fed. Cir. 2006)).

The Local Patent Rules "do not, as is sometimes misunderstood, require the disclosure of specific evidence nor do they require a plaintiff to prove its infringement case." *Technology Licensing Corporation v. Grass Valley USA, Inc.*, 2014 WL 3752108 at *2 (N.D. Cal. 2014) (citations and quotation marks omitted). "But a patentee must nevertheless disclose what in each accused instrumentality it contends practices each and every limitation of each asserted claim *to the extent appropriate information is reasonably available to it.*" *Id.* (emphasis added) (citations and quotation marks omitted).

Local Patent Rule 120(b)

Specifically, Local Patent Rule 120(b) requires a party claiming infringement to disclose each "apparatus, product, device, process, method, act, or other instrumentality" accused of infringing the asserted claims. "Each method or process must be identified by name, *if known*, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process", and each such "product, device, and apparatus must be identified by name or model number, *if known*". Local Patent Rule 120(b) (emphasis added).

Plaintiff's infringement contentions include the disclosures required under Local Patent Rule 120(b), identifying the products, devices, and apparatuses which, when used, result in the practice of the method of the asserted claims, as follows:

The products analyzed (referred to herein collectively as the "Accused Devices" or the "Accused Systems") are Defendant's mobile phones and/or tablets that include and implement at least (i) an operating system, (ii) certain pre-installed application programs, and (iii) a Dalvik Virtual Machine ("Dalvik VM"), including any Dalvik VM included with any one or more of the following versions of the Android Operating System software (the "Android system"):

Android 1.0
Android 1.1

(API level 1)
(API level 2)

1	Android 1.5	(Cupcake)	(API level 3)
	Android 1.6	(Donut)	(API level 4)
2	Android 2.0	(Éclair)	(API level 5)
	Android 2.0.1	(Éclair)	(API level 6)
3	Android 2.1	(Éclair)	(API level 7)
	Android 2.2-2.2.3	(Froyo)	(API level 8)
4	Android 2.3-2.3.2	(Gingerbread)	(API level 9)
	Android 2.3.3-2.3.7	(Gingerbread)	(API level 10)
5	Android 3.0	(Honeycomb)	(API level 11)
	Android 3.1	(Honeycomb)	(API level 12)
6	Android 3.2-3.2.4	(Honeycomb)	(API level 13)
	Android 4.0-4.0.2	(Ice Cream Sandwich)	(API level 14)
7	Android 4.0.3	(Ice Cream Sandwich)	(API level 15)

8 The default Android Operating System, including the Dalvik VM, for version of
9 the Android system is provided in Appendix C produced herewith.

10 *In particular, the Accused Systems include the mobile phones and/or tablets*
11 *identified in Appendix B, produced herewith, that include and implement any*
one or more of the pre-installed application programs identified in Appendix B,
and any one or more of the operating systems identified in Appendix B

12 Kropp Decl. [Dkt. No. 72], Ex. 1 at Appendix A, pp. 1-2 (emphasis added). In Appendix B and
13 the documents referenced therein, plaintiff provides specific, detailed information concerning the
14 accused devices known to plaintiff. *See* Gill Decl.,² Ex. 1 (Dell Appendix B and referenced
15 documents); Ex. 2 (HTC Appendix B and referenced documents); Ex. 3 (Huawei Appendix B
16 and referenced documents); Ex. 4 (LG Appendix B and referenced documents); Ex. 5 (Motorola
17 App. B and referenced documents); Ex. 6 (Samsung Appendix B and referenced documents); Ex.
18 7 (Sony Appendix B and referenced documents); Ex. 8 (ZTE Appendix B and referenced
19 documents).

20 Local Patent Rule 120(c)

21 Plaintiff's infringement contentions include the disclosures required under Local Patent
22 Rule 120(c), describing in Appendix A "specifically where each element of each Asserted Claim
23 is found within each Accused Device". *See* Kropp Decl., Ex. 1 at Appendix A, pp. 54-64
24 (element-by-element analysis of Claim 1, Preamble); 65-84 (element-by-element analysis of

25 ² "Gill Decl." refers to the Declaration of Jacob S. Gill in Support of Plaintiff's Partial Opposition
26 to Defendants' Motion to Strike Plaintiff's Infringement Contentions, filed contemporaneously
herewith.

Claim 1, Element (a)); 84-91 (element-by-element analysis of Claim 1, Element (b)); 91-92 (element-by-element analysis of Claim 1, Element (c)); 91-92 (element-by-element analysis of Claim 1, Element (d)); 93-97 (element-by-element analysis of Claim 1, Element (e)); 98-103 (element-by-element analysis of Claim 1, Element (f)); 104-06 (element-by-element analysis of Claim 2); 107- 08 (element-by-element analysis of Claim 3); 109-13 (element-by-element analysis of Claim 4); 114-15 (element-by-element analysis of Claim 6).

In particular, Appendix A to the infringement contentions describes the functionality of the Android operating system as it relates to the execution of applications, or "apps". For example, Appendix A explains:

An Android program (or application, sometimes referred to as an 'app') is contained in an .apk file that includes one or more .dex files. Each .dex file is prepared from one or more .class files (*i.e.*, compiled from Java source code), which are the fundamental building blocks of programs that run on a device. These .class files are modules that link to one another as discussed in the Background section, above. The Dalvik VM loads or "maps" and executes multiple classes from the .apk file.

Kropp Decl., Ex. 1 at Appendix A, p. 12. Appendix A further explains that such applications "are executed (run) directly within the Dalvik VM" (*id.* at Appendix A, p. 10), which is a "virtual machine that runs on" and is "included as an integrated component of the Accused Devices that include and implement the Android system" (*id.* at Appendix A, p. 11).

Defendants attack plaintiff's infringement contentions by asserting that plaintiff "fails to identify anywhere, in chart or verbiage, where or how any preinstalled applications satisfies a claim limitation." Defendants' Motion to Strike at p. 8. Defendants are wrong.

Plaintiff, in its element-by-element infringement analysis set forth in Appendix A, identifies the "second multi-module program" described in the Asserted Claims as "a .dex program or its corresponding derived optimized .dex program (*i.e.*, an .odex program)" consisting of "(i) one class found in the .dex file (such class being a 'discrete module' as referenced in the claims), and (ii) any class (or classes) that such 'discrete module' links to."

Kropp Decl., Ex. 1 at Appendix A, p. 54. In other words, the claimed "second multi-module

1 program is the program that the operating system is attempting to load or 'map' and run, whereas
 2 the first program is comprised of components of the operating system itself (including portions
 3 of the Dalvik VM) that are working to load or 'map' and run the second multi-module program."
 4 *Id.* at Appendix A, p. 57. And the documents referenced in Appendix B expressly identify, for
 5 each known Accused Device, the known applications that plaintiff asserts as being such a
 6 "Multi-Module Program Forming Part Of An Accused Product". *See, e.g.,* Gill Decl., Ex. 1 at
 7 pp. 7, 14, 19, 27; Ex. 2 at pp. 12, 19, 27, 35, 43, 51; Ex. 3 at pp. 6, 11, 17, 23, 29, 35; Ex. 4 at pp.
 8 8, 14, 19, 24, 29, 36; Ex. 5 at pp. 10, 19, 30, 39, 47, 54; Ex. 6 at pp. 7, 13, 20, 30, 38, 45; Ex. 7 at
 9 pp. 7, 16, 25, 34; and Ex. 8 at pp. 7, 12, 18, 24.

10 Defendants also attack plaintiff's infringement contentions by asserting that plaintiff
 11 "neglects to explain its basis for why it contends the accused functionality operates in the same
 12 manner across all 32 versions of Android and all Accused Products." Defendants' Motion to
 13 Strike at p. 11. Again defendants are wrong. Plaintiff directly addresses this issue:

14 Versions 1.5 to 2.3.7 and 4.0 to 4.0.3 of the Android system do not differ from
 15 one another in any way material to these infringement contentions. Although
 16 different versions of the Android system may [include] small changes to the code
 language, ***the operations of the Android system code as relevant to these***
infringement contentions do not differ amongst these versions.

17 It is believed that versions 1.0 and 1.1 of the Android system do not differ from
 18 the other versions of the Android system in a way that affects the infringement
 analysis, but ***the source code is not currently publically available.***

19 It is believed that versions 3.0, 3.1, and 3.2-3.2.4 of the Android system do not
 20 differ from the other versions of the Android system in a way that affects the
 infringement analysis, but ***the source code is not currently publically available.***

21 Kropp Decl., Ex. 1 at Appendix A, pp. 11-12 (emphasis added). That statement, along with the
 22 rest of plaintiff's infringement contentions, is more than sufficient to "crystallize" plaintiff's
 23 theory of the case and satisfy plaintiff's obligations under Local Patent Rule 120. *See Grecia v.*
 24 *Apple Inc.*, 2015 WL 81893 at *3 (N.D. Cal. 2015) (denying motion to strike or compel
 25 amendment where the infringement contentions "provide[d] adequate notice of [plaintiff]'s
 26 theory of infringement").

1 In addition, defendants' attack should be rejected because of their failure to assert any
 2 basis to question plaintiff's position, either in the instant motion or defendants' respective non-
 3 infringement contentions. *C.f. Implicit Networks Inc. v. Hewlett-Packard Co.*, 2011 WL
 4 3954809 at *2 (N.D. Cal. 2011) (rejecting defendant's challenge to plaintiff's categorization of
 5 products that "function in essentially the same way and, therefore, infringe each claim in
 6 essentially the same way" and noting that "[defendant] contests this assertion, but provides no
 7 specific argument, much less evidence, that any of the products grouped together in the
 8 categories used by [plaintiff] actually function in different ways that make [plaintiff]'s
 9 categorization improper").

10 Indeed, defendants' non-infringement contentions comprise nothing more than bare
 11 denials and attacks on the substance of plaintiff's infringement contentions. *See, e.g.*, Gill Decl.
 12 Ex. 9 at pp. 9-20. Local Patent Rule 121 "requires, as to each asserted claim element, either an
 13 admission that the accused product contains the element or a denial that "set[s] forth in detail the
 14 basis for that contention." *G Vincent Ltd. v. Dux Area Inc.*, 2009 WL 5125387 at *2 (W.D.
 15 Wash. 2009). Accordingly, defendants' non-infringement contentions are a more appropriate
 16 subject of a motion to strike. *See, e.g., id.* (granting motion to compel compliance with Local
 17 Patent Rule 121 where defendant's non-infringement contentions "consist[ed] of nothing more
 18 than a chart reciting various claim terms, and utterly unexplained denials of infringement").

19 Leave to Amend

20 Finally, if the Court believes that clarification of plaintiff's infringement contentions is
 21 necessary, plaintiff requests leave to amend its infringement contentions. *See* Local Patent Rule
 22 124 (permitting amendment for good cause); *see also, e.g., Technology Licensing Corporation*,
 23 2014 WL 3752108 at *4 ("Because TLC's contentions are insufficient, amendment is necessary.
 24 Any amended contentions shall be served within 14 days ").

25 ///

26 ///

III. Conclusion

For the reasons stated in Section I, above, plaintiff withdraws all contentions of infringement based upon making, offering to sell, selling and importing the accused devices. Plaintiff does not withdraw, and Plaintiff continues to pursue its other infringement claims against defendants. With respect to plaintiff's remaining claims, and for the reasons set forth in Section II, above, Defendants' Motion to Strike Plaintiff's Infringement Contentions should be denied, or, in the alternative, if the Court believes that clarification of plaintiff's infringement contentions is necessary, plaintiff should be granted leave to amend.

DATED this 2nd day of February, 2015.

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

By: s/Timothy S. DeJong
Timothy S. DeJong, WSBA No. 20941
Robert A. Shlachter, (admitted *pro hac vice*)
Jacob S. Gill (admitted *pro hac vice*)

209 SW Oak Street, Suite 500
 Portland, OR 97204
 Telephone: (503) 227-1600
 Facsimile: (503) 227-6840
 Email: tdejong@stollberne.com
 rshlachter@stollberne.com
 jgill@stollberne.com

-AND-

Kevin L. Russell (admitted *pro hac vice*)
 CHERNOFF, VILHAUER, MCCLUNG
 & STENZEL, LLP
 601 SW 2ND Avenue, Suite 1600
 Portland, OR 97204
 Telephone: (503) 227-5631
 Email: kevin@chernofflaw.com

-AND-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Keith Scully, WSBA No. 28677
Derek Linke, WSBA No. 38314
NEWMAN DU WORS LLP
2101 Fourth Ave, Suite 1500
Seattle, Washington 98121
Telephone: (206) 274-2800
Email: keith@newmanlaw.com
linke@newmanlaw.com

**Attorneys for Plaintiff/Counter-Defendant REC
Software USA, Inc.**

CERTIFICATE OF SERVICE

I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Ryan McBrayer	RMcBrayer@perkinscoie.com, docketsea@perkinscoie.com, NReynolds@perkinscoie.com
Christina J McCullough	CMcCullough@perkinscoie.com, ypoletaeva@perkinscoie.com
Kyle M Amborn	KAmborn@perkinscoie.com, ypoletaeva@perkinscoie.com
Michael J. Engle	MEngle@perkinscoie.com, mheap@perkinscoie.com
Andrew C Sonu	andy.sonu@finnegan.com
Christopher M Kurpinski	christopher.kurpinski@finnegan.com, raymond.smith@finnegan.com, seth.katz@finnegan.com, travis.smith@finnegan.com
Forrest A Jones	forrest.jones@finnegan.com, raymond.smith@finnegan.com, seth.katz@finnegan.com, travis.smith@finnegan.com
Andrew Ramiro Escobar	andrew.escobar@dlapiper.com, karen.hansen@dlapiper.com
Brent Yamashita	brent.yamashita@dlapiper.com
Asa Wynn-Grant	asa.wynngrant@dlapiper.com
Erik Fuehrer	erik.fuehrer@dlapiper.com, christine.kunis@dlapiper.com
Mark D Fowler	mark.fowler@dlapiper.com
Stellman Keehnel	stellman.keehnel@dlapiper.com, patsy.howson@dlapiper.com
Benjamin J. Setnick	bensetnick@andrewskurth.com, debbiereese@andrewskurth.com
James V. Mahon	jamesmahon@andrewskurth.com, mrutledge@akllp.com
John H. McDowell	johnmcdowell@andrewskurth.com, debbiereese@andrewskurth.com
Colin Barry Heideman	2cbh@knobbe.com, colin.heideman@knobbe.com, litigation@knobbe.com
Irfan A Lateef	irfan.lateef@knobbe.com, litigation@knobbe.com

CERTIFICATE OF SERVICE
(14-cv-01025-MJP)

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

1	Kendall M Loebbaka	Kendall.Loebbaka@knobbe.com, litigation@knobbe.com
2	Katherine M. Lieb	klieb@sillscummis.com
3	David C. Lee	dlee@sillscummis.com
4	Scott D Stimpson	sstimpson@sillscummis.com
5	Derek Linke	linke@newmanlaw.com, docketing@newmanlaw.com, sarah@newmanlaw.com
6	Keith P Scully	keith@newmanlaw.com, charlotte@newmanlaw.com, ecf@newmanlaw.com
7		
8	Roozbeh Gorgin	roozbeh.gorgin@ltlatterneys.com, edgar.martinez@ltlatterneys.com
9		
10	Edward S Quon	edward.quon@ltlatterneys.com, edgar.martinez@ltlatterneys.com
11	Enoch H Liang	Enoch.Liang@ltlatterneys.com, Francine.McGinity@ltlatterneys.com
12		
13	Lauren Sliger	lauren.sliger@ltlatterneys.com, edgar.martinez@ltlatterneys.com
14	Eric David Lansverk	edl@hcmp.com, ms@hcmp.com
15	Michael Ramsey Scott	michael.scott@hcmp.com, suzanne.powers@hcmp.com
16	Eugene Mar	EMar@fbm.com, MClaros@fbm.com
17	James W Morando	JMorando@fbm.com, bheuss@fbm.com, Calendar@fbm.com
18		
19	Julia F Kropp	jkropp@fbm.com, bwestburg@fbm.com
20	Everett McClyde Upshaw	everettupshaw@everettupshaw.com, contact@everettupshaw.com
21	Jacqueline M. Lee	jacquelinelee@everettupshaw.com, contact@everettupshaw.com
22		
23	Frank A DeCosta	frank.decosta@finnegan.com, raymond.smith@finnegan.com, seth.katz@finnegan.com, travis.smith@finnegan.com
24		
25	John Mulcahy	john.mulcahy@finnegan.com
26	Franklin Dennis Cordell	fcordell@gordontilden.com, jlucien@gordontilden.com

CERTIFICATE OF SERVICE
(14-cv-01025-MJP)

STOLL STOLL BERNE LOKTING & SHLACHTER P.C.
209 S.W. OAK STREET, SUITE 500
PORTLAND, OREGON 97204
TEL. (503) 227-1600 FAX (503) 227-6840

1 Jeffrey M Thomas jthomas@gordontilden.com, chudson@gordontilden.com
2 Gregory F Wesner wesnerg@lanepowell.com, brownj@lanepowell.com
3 docketingsea@lanepowell.com
4 Tiffany Scott Connors connorst@lanepowell.com, hooperl@lanepowell.com
5 sheaffers@lanepowell.com
6 John H Jamnback jjamnback@yarmuth.com, sstephens@yarmuth.com
7 Julia Donna Woog jwoog@yarmuth.com, kkennedy@yarmuth.com
8 Molly A Terwilliger mollyt@summitlaw.com, deniseb@summitlaw.com,
9 kristeno@summitlaw.com
10 Nicholas Thomas nthomas@mhlseattle.com, eortiz@mhlseattle.com,
11 mstark@mhlseattle.com
12 Thomas R Merrick tmerrick@mhlseattle.com, mbrandt@mhlseattle.com

13 DATED this 2nd day of February, 2015.

14 STOLL STOLL BERNE LOKTING & SHLACHTER P.C.

15 By: s/Timothy S. DeJong
16 **Timothy S. DeJong**, WSBA No. 20941
17 **Robert A. Shlachter**, (admitted *pro hac vice*)
18 **Jacob S. Gill** (admitted *pro hac vice*)

19 209 SW Oak Street, Suite 500
20 Portland, OR 97204
21 Telephone: (503) 227-1600
22 Facsimile: (503) 227-6840
23 Email: tdejong@stollberne.com
24 rshlachter@stollberne.com
25 jgill@stollberne.com
26